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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,439	07/26/2006	Todd A. Eckert	17303-62825	5580
35973 7590 03/05/2008 BINGHAM MCHALE LLP 2700 MARKET TOWER 10 WEST MARKET STREET INDIANAPOLIS, IN 46204-4900				
EXAMINER				
SINGH, KAVEL				
ART UNIT		PAPER NUMBER		
3651				
NOTIFICATION DATE		DELIVERY MODE		
03/05/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/549,439

Applicant(s)

ECKERT ET AL.

Examiner

KAVEL P. SINGH

Art Unit

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 41-45 and 56-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 41-45 and 56-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 9/04/07
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

The 35 U.S.C. 112 second paragraph rejection to claim 41 has been withdrawn.

Applicant's arguments filed 9/04/07 have been fully considered but they are not persuasive. Regarding claim 41, Applicant argues that Frank does not teach slippable rollers, but according to the definition of slippable (to move to cause to move smoothly), the rollers (24,25) as taught by Frank teaches conveyor rolls to rotate the selected series of conveyor rolls (C3 L5-10).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Applicant argues that Frank and Jabbusch are not obvious to combine, but it is the addition of the infeed conveyor and the wrapping station (C2 L45-50) which is the only limitation in the claim. It is unclear of the Applicant's arguments of not Frank and Jabbusch do not teach all the claim limitations.

For the foregoing reasons claims 41-45 stand rejected.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 45 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 45 and 57 has been amended to include the limitation of first portion and the second portion are driven at the same conveying speed and teaches the second conveying speed of the second section is more than about one and one-half the conveying speed of the first section. From the research of the specification, the Applicant does not disclose any first or second portions. It is unclear the difference of the second portion to the second section. For the analysis, second portion and second section is considered the same.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 41-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Frank U.S. Patent No. 3,992,182.

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Claim 41, Frank teaches a first section of roller shafts (24) each driving a plurality of slippable rollers, a first portion of the first section driving rollers which slip at a first predetermined torque, a second portion of the first section driving rollers (25) which slip at a second predetermined torque, the second torque being greater than the first torque; a second section of roller shafts, each driving at least one roller fixed to a corresponding shaft of the second section (25), the second section (25) adapted and configured for receiving products conveyed from the first section (C4 L20-25); and means for stopping a product on the second portion of the first section, the stopping means being proximate to the second section (C4 L66-68).

Claims 42 and 43, Frank teaches the portion of the first section (24) has a length that is less than about the length of the product (C8 L20-25).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Frank U.S.

Patent No. 3,992,182 in view of Jabbusch U.S. Patent No. 3,894,627.

Claim 44, Frank teaches an infeed conveyor receiving conveyed products from the second section, but not as Jabbusch teaches providing the products to the product wrapper (C2 L9-12). It would have been obvious to one of ordinary skill in the art at the time of the invention to add a wrapper section as taught by Jabbusch into the invention

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of Frank to provide an additional working station and allow easy packaging for any article being transferred.

Claim 56, 57, and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frank U.S. Patent No. 3,992,182 in view of Jabbusch U.S. Patent No. 3,894,627 in further view of Wielebski U.S. Patent 6,522,944.

Claim 56, Wielebski teaches an electronic controller (48) in order for controlling the speed of the second section (25) of Frank; and Frank teaches a sensor (38) providing to the controller a signal corresponding to the position of the conveying surface (C4 L65-67) of the infeed conveyor (22) as taught by Jabbusch; Wielebski teaches wherein said controller (48) for the controls the speed of the second section in response to the signal as taught by Frank. It would have been obvious to one of ordinary skill in the art at the time of the invention to use a controller as taught by Wielebski into the invention of Frank to be able to transfer the articles with control and logic.

Claim 57, Frank teaches a first means (30) for driving the first portion (24), a second means (130) for driving the second portion (25), Wielebski teaches a third means (131) for driving the second section (C4 L30-35), and an electronic controller (271,272,273) operatively coupled to the first driving means (30), the second driving means (130) and the third means (131) of Frank. It would have been obvious to one of ordinary skill in the art at the time of the invention to use a controller as taught by Wielebski into the invention of Frank to be able to transfer the articles with control and logic

Claim 58, Wielebski the controller (48) into Frank who operates the second portion (25) and the second section (25) at substantially the same speed. It would be obvious to

one of ordinary skill in the art to use a controller to operate the conveyor at substantially the same speed as taught by Wielebski into the invention of Frank in order to transition the article from section to section.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ms. Kavel P. Singh whose telephone number is (571) 272-2362. The examiner can normally be reached on M-F 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KPS

/Gene Crawford/
Supervisory Patent Examiner, Art
Unit 3651